THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

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W.P.No.7252 of 1993

ORDER:

This is a writ of Mandamus filed by the petitioner seeking to call for the records relating to his reversion through the order dated 25-05-1993 from the post of Junior Assistant to the post of Office Clerk and declare that the same is illegal, arbitrary and violative of article 14 and 16 of Constitution of India and principles of natural justice and issue a consequential direction to the first respondent that the petitioner is entitled to continue as a Junior Assistant with all attendant benefits.

2. The petitioner in support of the writ petition filed an affidavit and the flowing are the averments, which read as follows:

The petitioner was initially appointed as a Casual Labour on 23-02-1977 and later on, promoted to time scale worker with effect from 01-10-1979 and the post is designated as Office Clerk vide proceedings dated 26-08-1986. Though he was working as an Office Clerk, he was attending to the duties of Junior Assistant-cum-Store Keeper since 1979. The first respondent through the proceedings dated 12-02-1993 promoted him to the post of Junior Assistant and accordingly, he is functioning as a Junior Assistant. The first respondent issued a show cause notice for reservation on 09-03-1993 on the plea that the second respondent made a representation that he is entitled to be considered for promotion in preference to the petitioner.

3. On receipt of the said show cause notice, detailed objections were preferred on 29-03-1993 contending that the second respondent is not entitled for promotion in the Hyderabad unit. The second respondent belongs to Nalgonda/Ranga Reddy District unit, which is a separate unit for the purpose of appointments or promotions, in view of the proceedings of the first respondent dated 20-12-1988. The second respondent is not entitled to be considered as an employee of the Hyderabad unit, since he is born in the unit of Nalgonda/Ranga Reddy District and that the said unit is a separate entity for the purpose of recruitment, promotions and other service conditions, therefore, the impugned order reverting the petitioner under the impression that the second respondent is senior to him is liable to be set aside.

4. The first respondent contended that a qualifying test was conducted in 1982 in view of the vacancies that were reserved for SC, ST and BC candidates for the post of Junior Assistant in Telangana area. One post of Junior Assistant in MPF, Hyderabad fallen vacant which in fact reserved for BC-A candidate. As per the seniority, the post is to be given to BC-A candidate, who was senior in the list and in view of his refusal to accept the appointment as Junior Assistant as he was working as Telephone Operator, there was no other BC-A candidate from the seniority list, therefore, the next chance is to be given to BC-B candidate among the seniority list. The second respondent stands at serial No.3 in the eligible candidates for the promotion to the post of Junior Assistant, whereas the petitioner who also belongs to the same group was listed at serial No.12 and whereas the third respondent was shown at serial No.9, who also belongs to the same group. Inspite of this seniority position, orders were erroneously passed promoting the petitioner to the post of Junior Assistant ignoring respondents 2 and 3 who are seniors to him. As against the promotion of the petitioner, the second respondent submitted objections on 16-02-1993. After considering the objections and also the seniority position in the list, the petitioner was given notice and thereafter he was reverted back to the post of Clerk.

5. The contention of the petitioner is that the second respondent who was promoted to the post of Junior Assistant has been transferred to Mother Dairy on its formation in 1989 and therefore, when the second respondent was transferred to a separate unit, he cannot be considered for promotion to the post of Junior Assistant in the MPF, Hyderabad.

6. Even if the second respondent is ignored, the third respondent who is senior to him has to get the promotion but not the petitioner. However, the third respondent has taken VRS from the organization in 1997 and now the second respondent who belongs to Ranga Reddy District is working in the first respondent organization, Hyderabad, therefore, the contention of the petitioner that he is entitled for promotion to the post of Junior Assistant basing on the seniority list of 1992 is untenable and it cannot be accepted by ignoring the seniority of the third respondent.

7. During the course of arguments, the learned counsel for the petitioner conceded that the respondents 2 and 3 are seniors to the petitioner as per the seniority list of 1993.

8. Learned counsel for the respondents represented that there is no subsequent seniority list and as the respondents 2 and 3 are seniors to the petitioner, their cases have to be considered before giving promotion to the petitioner.

9. The learned counsel for the petitioner submitted that as the second respondent was transferred to another unit and as the third respondent took voluntary retirement, the petitioner is entitled to get the promotion, therefore, the impugned order is liable to be set aside.

10. It is an admitted fact that the petitioner is at 12th place, whereas the second respondent is at 3rd place and the third respondent is at 9th place in list of eligible candidates. The first respondent repeatedly asserted that the second respondent was retransferred from the other unit and he is now working in Hyderabad unit, therefore, he is entitled to be considered for promotion before considering the case of the petitioner. As on the date of the impugned order, the third respondent was in service and he took voluntary retirement in 1997.

11. In view of the above factual position, the petitioner is not entitled for promotion by ignoring the cases of respondents 2 and 3 who are seniors to him.

12. In the light of the above circumstances, the impugned order, dated 25-05-1993, is not liable to be set aside. The writ petition is devoid of merits, and it is accordingly, dismissed. No costs.

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Dr. G.YETHIRAJULU, J

Date: -04-2006

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